

## REMARKS/ARGUMENTS

1. The Examiner rejected claims 1-10 under 35 U.S.C. § 103(a) as being unpatentable over Geiger et al. (U.S. Patent No. 6,250,506) in view of Connelly et al. (Ireland Abstracted Publication No. IE 73466B). Claim 11 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Geiger et al. in view of Connelly et al., and further in view of Fazio (U.S. Patent No. 5,284,674). Claims 3, 8, and 11 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Reconsideration of this application is respectfully requested in view of the amendments and/or remarks provided herein.

### Rejection under 35 U.S.C. § 112, second paragraph

2. Claims 3, 8, and 11 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, with respect to claim 3, the Examiner states that “the agglomerator” in said claim lacks antecedent basis. Further, with respect to claim 8, the Examiner states that said claim omits the step of the allegedly essential step of “a method of providing a liquid drink.” Finally, with respect to claim 11, the Examiner states that said claim is confusing because the Examiner does not understand how “liquid powdered milk” can be both liquid and powdered.

Applicant has herein amended Claims 3, 8, and 11 to correct the minor informalities noted by the Examiner. In particular, Applicant has removed the term “agglomerator” from claim 3, revised the preamble of claim 8, and eliminated the allegedly confusing term “liquid powdered” from claim 11. Accordingly, Applicant respectfully submits that he has overcome the Examiner’s rejections and requests that the Examiner withdraw his rejections of claims 3, 8, and 11 under 35 U.S.C. § 112, second paragraph.

### Rejections Under 35 U.S.C. § 103(a)

3. Claims 1-10 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Geiger et al. (“Geiger”) in view of Connelly et al. (“Connelly”). More particularly, the Examiner

states that Geiger discloses a method for producing a beverage wherein beverage powders, such as dry milk, are mixed with water within a vending machine and dispensed to a receptacle on-demand. The Examiner further states that Connelly teaches preparing a milk powder by heating liquid milk to a pasteurizing extent, evaporating same, spray drying, and treating same with a fluid bed dryer.

Applicant has herein amended independent claims 1 and 4-10 to more clearly distinguish the recitations of said claims from the disclosures of the cited references. In particular, each of the independent claims have been amended to recite an agglomeration step that results in a powder having a particle bulk density in the range of 0.25 g/cc to 0.34 g/cc. Applicant's amendments are fully supported on page 4, lines 15-17 of Applicant's originally filed specification. None of the cited references disclose or suggest agglomeration of liquid milk such that the resulting powder has a particle bulk density in the foregoing range. Rather, most bulk or consumer-packaged non-dairy creamers have much larger particle bulk densities, resulting in clumping or feathering (floating instead of dissolving) when placed in hot liquids. Therefore, claims 1 and 4-10, as amended, are not obvious in view of the cited references. Accordingly, Applicant requests that the Examiner withdraw his rejection of claims 1 and 4-10, and pass claims 1 and 4-10 to allowance.

Claims 2 and 3 depend upon claim 1, which claim has been shown allowable above. Therefore, since claims 2 and 3 each introduce additional subject matter that, when considered in the context of the recitations of claim 1, constitutes patentable subject matter, Applicant respectfully submits that claims 2 and 3 are in proper condition for allowance.

4. Claim 11 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Geiger in view of Connelly, and further in view of Fazio. More particularly, the Examiner states that Fazio teaches a method for preparing a creamer similar to that disclosed in Claim 11. Applicant disagrees with the Examiner's characterization of the recitations of claim 11 in view of the cited references.

Fazio discloses the preparation of a non-natural or synthetic powder by using partially hydrogenated vegetable oil (see col. 3, line 65 through col. 4, line 9) and adding emulsifiers and

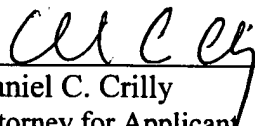
stabilizers (see col. 5, lines 1-48). By contrast, claim 11 recites the use of milk caseinates to produce a natural dairy creamer. As a result, Fazio discloses creation of an imitation powdered dairy creamer; whereas, Applicant's claim 11 recites the formation of a natural powdered dairy creamer. Therefore, the disclosure of Fazio and the recitations of Applicant's claim 11 are complete opposites. Thus, one of ordinary skill in the art would clearly not be motivated to combine the teachings of Fazio with the other cited references to produce a completely natural powdered dairy creamer. While not believed necessary to distinguish the recitations of claim 11 from the disclosure of Fazio, Applicant has nonetheless amended claim 11 to unambiguously indicate that Applicant's dairy creamer formed by his agglomeration process is completely natural. Based on the foregoing differences between the disclosure of Fazio and the recitations of Applicant's claim 11, Applicant respectfully requests that the Examiner withdraw his rejection of claim 11 and pass claim 11 to allowance.

#### New Claims

5. Applicant has herein added new dependent claims 12-39 directed to additional features of the present invention. Applicant submits that such claims are fully supported by Applicant's originally filed specification at page 4, lines 15-21 and are patentably distinct from the prior art of record. Accordingly, Applicant requests that the Examiner pass new claims 12-39 to allowance. With the addition of new claims 12-39, 39 claims remain pending in the instant application, nine of which are independent. Applicant had previously paid for examination of 20 claims, nine of which were independent. Therefore, Applicant encloses a check in the amount of \$171.00 to cover the examination of 19 additional dependent claims.

6. The Examiner is invited to contact the undersigned by telephone, facsimile or email if the Examiner believes that such a communication would advance the prosecution of the instant application. Please charge any necessary fees associated herewith, including extension of time fees (if applicable and not paid by separate check), to the undersigned's Deposit Account No. 50-1111.

Respectfully submitted,

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### **CERTIFICATE OF MAILING**

I HEREBY CERTIFY that the following correspondence: AMENDMENT AND RESPONSE (12 pages); RETURN POSTCARD FOR CONFIRMATION OF RECEIPT is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, this the 23<sup>RD</sup> day of January, 2004.

Chrisde Mendez, Legal Assistant

January 23, 2004

Date